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AROUND THE WORLD

Addressing the idiosyncratic needs of Orthodox Jewish couples requesting sex selection by preimplantation genetic diagnosis (PGD)

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Abstract We report here on ethical considerations addressing the idiosyncratic needs of two Orthodox Jewish couples requesting sex selection through PGD. The patients' considerations stem from generally healthy concerns, are not based on any gender biases and have little chance of having any major societal impact, given the idiosyncratic nature of the situation. Halakhah, the legal and ethical system of rabbinic Orthodox Judaism, generally opposes sex selection through PGD for nonmedical reasons, but would approve the procedure in these cases. Meeting these needs within the context of the doctor-patient relationship necessitates reconsidering to some extent the ASRM Ethics Committee guidelines.

Keywords Sex selection · Gender selection · PGD · Jewish · Ethics

Introduction

Medical professionals working with couples trying to overcome infertility must be aware of the specific religious constraints and concerns of their patients in order to provide optimum treatment and support. Orthodox Jews are committed to Halakhah, the traditional corpus of Jewish law and ethics. The basic sources for the investigation of halakhic positions on any ethical or legal issue are the Bible, the Mishna and Talmud, and universally accepted codifications such as Maimonides' *Mishneh Torah* or the later *Shulhan Arukh*. But rulings on contemporary issues cannot be promulgated by any central authority, as there is no formal hierarchal structure to the various rabbinic authorities and courts currently functioning. Positions on contemporary issues are developed by circulation of responsa (rabbinic rulings) to questions posed to various rabbinic authorities. Collegial review and community acceptance eventually allow for specific opinions to emerge as dominant. Yet, even when one view surfaces as authoritative, individual rabbis or layman will often defer to their local authority, whose position is considered decisive.

We report here on ethical considerations addressing the idiosyncratic needs of two Orthodox Jewish couples requesting sex selection through PGD. The patients' considerations stem from generally healthy concerns, are not based on any gender biases and have little chance of having any major societal impact, given the idiosyncratic nature of the situation. Halakhah generally opposes sex selection through PGD for non-medical reasons, but would approve the procedure in these cases. Meeting these needs within the context of the doctor-patient relationship necessitates reconsidering to some extent the ASRM Ethics Committee guidelines.

Sex selection and medical ethics

There are three principal means for sex selection (putting aside various ineffectual folk suggestions). One is prenatal diagnosis (either through a sonogram, amniocentesis, or chorionic villus sampling) followed by abortion of fetuses having the unwanted sex. This is readily available in all

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countries allowing abortion on demand (where the woman need not articulate the reason she wants an abortion). Another is preimplantation genetic diagnosis (PGD) followed by selective implantation based on sex. Barring lab errors, these two methods are 100% effective. A third is the less-certain technique of pre-fertilization separation of sperm into X- and Y-bearing spermatozoa followed by IUI or IVF with the desired sperm. The Genetics and IVF Institute in Fairfax, Virginia, developed the technology for humans (known as "MicroSort") and currently has an exclusive license, claiming a 90% success rate for girls and 73% success rate for boys. It offers this service only for the purpose of "family balancing"—that is, having a child of one sex after having a number of children of the opposite sex.

In 1999, the Ethics Committee of the American Society of Reproductive Medicine [1] concluded that preimplantation genetic diagnosis (PGD) used for sex selection to prevent the transmission of serious genetic disease is ethically acceptable. However, the use of PGD for nonmedical reasons was problematic and should be discouraged because it poses a risk of unwarranted gender bias, social harm, and results in the diversion of medical resources from genuine medical need. In 2001, the Ethics Committee [2] concluded that sex selection aimed at increasing gender variety in families should not be prohibited or condemned as unethical in all cases. If the social, psychological and demographic effects of such use of preconception sex selection are found to be acceptable, then other nonmedical uses of preconception sex selection might be considered.

Subsequently, Robertson [3] reported that the ASRM Ethics Committee reaffirmed its previous conclusion that initiating IVF and PGD solely for non-medical sex selection "should be discouraged." The interest in choosing the sex of offspring is not necessarily strong enough to justify the creation and destruction of embryos for that purpose, he explained. He added that there has not been sufficient ethical and social debate as to whether there are circumstances in which embryos (even if none were destroyed) may be created and selected for transfer on nonmedical grounds alone and concluded that these issues deserve close attention in the future.

Gleicher and Karande [4] reported the conclusion of the institutional review board (IRB) of The Center for Human Reproduction, arguing in the same issue of Fertility and Sterility that "Gender selection for nonmedical reasons either is or is not ethical. If the ASRM maintains its official position that it potentially is (in reference to preconception techniques), then one has to reach the same conclusion for all applicable techniques and leave it up to the patients which to choose." They conclude that "selected information and limited access to only one procedure option, especially if it is the qualitatively inferior one, appears, though currently the formal ASRM position, of questionable validity."

While ethical guidelines suggest limiting the number of fertilized eggs implanted after IVF to limit the eventual necessity of multifetal pregnancy reduction, no attempt is made to minimize the number of eggs harvested or then fertilized through IVF. In virtually all IVF labs, the disposal of fertilized eggs that are not implanted is at the discretion of the couple and can include instructing the laboratory to ethically destroy unused embryos, donate them to other couples or research, or have them cryopreserved.

Halakhic judaism and fertility therapy

Grazi [5] describes fully the major issues concerning the interface of fertility medicine and religion in the lives of halakhically observant couples. As a general statement, Halakhic Judaism welcomes with enthusiasm the new opportunities to help couples overcome the pain of infertility. However, it has its own ethical concerns that might limit the applicability or acceptability of various therapies and protocols. While the position is not universally endorsed, halakhic Judaism generally allows IUI and IVF using the gametes of the married couple to overcome infertility problems. Untransplanted fertilized embryos have no halakhic standing and may be discarded.

There is, however, vigorous debate among halakhic authorities regarding the use of donor gametes, especially donor sperm. In one view, donor sperm violates the exclusivity of marriage to such an extent that it should be rejected as too akin to adultery. In the other view, the absence of any physical sexual contact leaves the process as ethically neutral. However, even those who permit donor gametes do so hesitatingly. IVF may be further disruptive than IUI regarding normal marital relations, but it is also further removed from association with adultery, as third-party sperm is not introduced into the reproductive tract of a married woman.

A minority of halakhists maintains that a child born through artificial insemination or IVF has no halakhic relationship to the genetic father. The majority view, however, is that child has the same relationship to his or her genetic father as if conception had occurred naturally. This means that in the case of donor sperm, the child relates to the social father as a foster child, as Halakha sees contemporary adoption as foster parenting. The child is not considered the natural child of the social father, as in American law, but his ward. A fear regarding donor sperm is that the child might unwittingly marry a half-sibling. For this reason, most halakhists prefer that the sperm come from a gentile donor, as under Jewish family law, a child has no halakhic sibling relationship to a paternal half-sibling if the father is a gentile.

Halakha sees no intrinsic flaw in wanting a child of a particular sex, and the Talmud even proposes various noninvasive suggestions to help realize one's desire. However,

it does not indiscriminately waive religious prohibitions otherwise in effect to realize this goal. The personal desire to have specifically a son or daughter does not in and of itself override the halakhic imperative to maintain natural marital relations. Hence Rabbi Yitzhak Zilberstein [6], who regularly contributes responsa to the Israeli Medical Halakha Group, rejects IVF for sex selection (flow cytometry not having been developed at that time): "[Normally] God joins with man and wife [in creating a child]," he writes "but here it is the doctor's hand [instead]." It is simply absurd, he maintains, to consider putting aside the general halakhic concerns to allow one to bring into the world an infant which, according to some halakhic authorities has doubtful halakhic status as the father's legal child, has doubtful status as the legal heir, and whose only certain status is that of a male or female baby. That notwithstanding, he continues, "one cannot close the door in the face of despondent people who suffer mental anguish in fear of giving birth to sick children, pressure which can drive the mother mad. Therefore, in the case of a serious genetic disease which affects the couple, it is difficult to forbid the suggestion [for genetic screening through PGD]."

It is important to note that it is the mental anguish of the parents that creates a compelling situation that allows for the genetic screening and, in a sense, creates the medical need. It is such an approach that allows many halakhists to allow abortion of a fetus diagnosed with Tay Sachs disease. It is the parents' legitimate distress rather than the child's medical condition that creates the compelling situation necessary to allow the abortion.

The medical use of flow cytometry for sex selection in cases of sex-linked genetic diseases such as hemophilia was confirmed by Rabbi Shelomo Zalman Aurbach [7], one of the late leading halakhic authorities of the past century. He opposed sex selection for family balancing.

Rabbinic aversion to sex selection for nonmedical purposes was confirmed recently when the Israeli Ministry of Health decided to allow sex selection. They would restrict such permission to family balancing for a couple with four children of the same sex if an ethics committee including a psychiatrist concludes that withholding such approval would cause damage to the mental health of at least one of the parents or the future child. Rabbinic authorities were quoted as condemning sex selection for personal parental satisfaction as antithetical to traditional Jewish values [8].

Idiosyncratic ethical issues

Two idiosyncratic cases regarding sex selection came to discussion as a result of the specific concerns of two Orthodox Jewish couples. Both concerned cases of donor sperm and each emerged from the fact that the social father is not considered the halakhic father of the child.

One case concerned the halakhic consideration of *yichud*, which prohibits unrelated men and women from being alone together in a closed room unobserved by a third party. Adopted children are halakhically unrelated to their social parents, and therefore some halakhists consider the prohibitions of *yichud* as applicable to them. For this reason, some halakhists discourage adoption in general. Other authorities argue that the deep psychological sexual taboos that exist in normal families are to be found in those families where the child was adopted at birth, and therefore waive *yichud* considerations in such families [9]. In the case of donor sperm, the child is halakhically related to the mother but not the social father. She has no *yichud* prohibitions with either a male of female child. But those who apply *yichud* prohibitions to adoptive families would impose them on living relationships between the social father and a female child—but not a male one. The halakhic authority who had allowed the donor sperm also insisted on sex selection for a male child to avoid *yichud* problems and allow for the regular social interaction common to biological families.

The second case concerned the fact that the child would not have the same status as a *kohen* that the social father had. A *kohen* is a descendent of Aaron the biblical High Priest, and has special public duties and rights in the synagogue. Within a religious community, it is obvious who is a *kohen* and who is not. The social father here was concerned that every member of the community would thereby know that the child was not his genetic son, destroying his privacy in the matter. He therefore requested PGD to guarantee a daughter.

In both cases, the need for donor sperm had obviated the halakhic concerns regarding interrupting normal marital relations.

Discussion

In both cases, we are dealing with despondent people who are suffering mental anguish in fear of either, on the one hand, a family situation that will be devoid of the normal interactions of natural families or, on the other hand, intense embarrassment and invasion of one's privacy. The fact that there are alternate halakhic opinions regarding both the applicability of *yichud* restrictions or the wisdom of maintaining the secrecy of the donor gametes does not diminish the reality of their anguish or its integrity within their halakhic worldview, which should not be derided. The desires for both family intimacy and personal privacy stem from generally healthy concerns and are unrelated to any gender bias.

In the *yichud* case, the man had azospermia after being treated for cancer. Eggs were obtained from his wife in the hope of finding some sperm using testicular aspiration, which could then be used for ICSI, but there were none. This led to the alternate option of using donor sperm. The couple requested PGD of the cleavage-stage embryos for the sole

purpose of sex selection, although it should be noted that it was not PGD considerations that motivated the creation of these embryos through IVF. Rabbi Yigal Shafran [10], Director of the Jerusalem Rabbinate's Department of Medicine and Halakha, who had been among those condemning sex selection for personal parental satisfaction as antithetical to traditional Jewish values, indicated that in his opinion this *yichud* case would come under the rubric of situations deemed permissible by Rabbi Aurebach.

In the *kohen* case, presented originally more than a decade ago, Rabbi Aharon Lichtenstein [11], Dean of Yeshivat Har Etzion in Israel gave the following opinion:

> In principle, the suggested procedure is no more problematic than artificial insemination from a gentile donor and, indeed, is probably less so. Insomuch as I accept the view of the *matirim* [those who permit it] (at least in situations of distress, such as this) with respect to the latter, I see the proposed procedure as at least equally *mutar* [permitted]. . . .
>
> Given the facts you set forth on the technical plane, and inasmuch as in cases of adoption (admittedly slightly different) experience has shown that at some point it is best that a child be told the truth, I have serious doubts about the wisdom of perusing this course—especially, as it's only a fifty percent *safek* [uncertainty]. But I understand the complexity of the issue and the feelings it arouses, and the couple must of course decide for itself.

When a similar case had occurred in Israel a few years ago, The Israeli Health Ministry's legal adviser, Mira Hivner-Harel [12], had allowed the procedure at Hadassa Medical Center in Jerusalem on an ad hoc basis, no legal position being in effect. "In light of the fact that we are concerned with an individual for whom the halakha and religion are his guiding principles . . . there was room to agree to his request," she said. "We are dealing with a family that would not have any children had we not allowed them to select the sex of the fetus. Sometimes we have to adapt our decisions to the spirit and traditions of the people."

It is interesting to note that it is not only Jewish ethicists who are willing to consider a more liberal approach to sex selection policies. For example, the Workshop of the International Islamic Center for Population Studies and Research at Al-Azhar University in Cairo, Egypt, concluded that sex selection for family balancing was sometimes ethically acceptable, and that "an application for PGD for sex selection should be disfavored in principle, but resolved on its particular merits" [13].

The ASRM Ethics Committee conceded that there has not been sufficient ethical and social debate regarding the circumstances in which embryos (even if none were destroyed) may be created and selected for transfer on nonmedical grounds alone and concluded that these issues deserve additional close attention in the future. Both cases presented here deal with despondent people who are suffering mental anguish in fear of either, on the one hand, a family situation that will be devoid of the normal interactions of natural families or, on the other hand, intense embarrassment and invasion of one's privacy. From the halakhic perspective, these may be considered compelling circumstances allowing treating the cases as those allowed on medical grounds. Indeed, in both of these cases, the rabbinic approval comes against a backdrop of disapproval for sex selection for anything other than medical reasons.

The patients' considerations stem from generally healthy concerns and are not based on any gender biases (if we take gender bias to mean extending greater worth to one gender over another). The procedure bears little risk of consequences detrimental to individuals, and represents a use of medical resources for reasons of human mental health. There is little chance of this having any major societal impact, given the idiosyncratic nature of the situation.

Conclusion

It is difficult to argue that each and every request for nonmedical sex selection through PGD is inherently unethical, especially when it reflects no gender bias; is supported by major religious and ethical traditions that inform our societal secular ethical sensitivities; and is presented within a society that, in any event, allows unchallenged sex selection through abortion. Respect for the ethical and religious universe of one's patients should be a natural component of any therapeutic protocol, especially in those cases where its concerns reflect the overall attitude of the general medical community. No doubt policies will continue to evolve after examining whether the social, psychological and demographic effects of such non-medical use of preconception sex selection are found to be acceptable. Meeting the idiosyncratic needs of these couples within the doctor-patient relationship seems appropriate.

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